UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,237	07/09/2001	Paul D. Daly	60426-282; 2000P07905US01	7497

24500 7590 04/13/2007

SIEMENS CORPORATION
INTELLECTUAL PROPERTY LAW DEPARTMENT
170 WOOD AVENUE SOUTH
ISELIN, NJ 08830

EXAMINER	
CHAU, COREY P	
ART UNIT	**PAPER NUMBER**
2615	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/901,237	DALY, PAUL D.	
	Examiner	Art Unit	
	Corey P. Chau	2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6 and 20-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6 and 20-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. The indicated allowability of claims 1-6 and 20-22 is withdrawn in view of new interpretation. A Non-final Rejections based on the new interpretation follow.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-6 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5748748 to Fischer et al (hereafter as Fischer).

4. Regarding Claims 1, Fischer discloses an air induction system comprising (Figs. 1, 3, and 5):

an air induction body (Figs. 1, 3, and 5);

a speaker (Figs. 1, 3, and 5; column 5, lines 35-44);

a control unit in communication with said speaker (Figs. 1, 3, and 5), having at least two modes of noise attenuation signal generation (column 3, lines 43-63);

an engine sensor (Fig. 1; column 7, line 58 to column 8, line 5) for communicating engine data to said control unit (Fig. 1); and

said control unit for selecting one of said at least two modes of noise attenuation signal generation based on said engine data (the influence can also consist of changing an undesirable oscillation into a desirable oscillation as a function of the operating condition of the vehicle)(column 3, line 43 to column 4, line 28); and

wherein said at least two modes of noise attenuation signal generation comprises a first driving mode and a second driving mode, said first driving mode providing a lower level of noise attenuation than said second driving mode (column 3, line 43 to column 4, line 59; column 9, lines 29-42; column 13, line 25 to column 14, line 8).

Fischer does not expressly discloses said control unit selects said first driving mode in response to a high engine speed and a high engine load communicated to said control unit by said engine sensor and said control unit selects said second driving mode in response to a low engine speed and a low engine load communicated to said control unit by said engine sensor.

However, the examiner takes Official Notice that it is well known in the art that a car that is in low speed and low load would desire a higher noise attenuation than a car that is in high speed and high load because at low speed and load, for example, 5 MPH or less, the driver of the car would not desire to sound like a sport car, which would be disturbing to the driver and other people on the road or the neighborhood that the driver is driving around. However, in high speed and load, the driver would desire to have less noise attenuation to be carried out, which would provide the impression of driving a sport car.

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Fischer to have the control unit of Fischer, select said first driving mode in response to a high engine speed and a high engine load in order to provide the user of the car with less noise attenuation to be carried out, which would provide the impression of driving a sport car and have the control unit of Fischer, select said second driving mode in response to a low engine speed and a low engine load in order for the user of the car with higher noise attenuation, which would be less disturbing to the driver and other people on the road or the neighborhood that the driver is driving around.

5. Regarding Claim 2., Fischer as modified discloses engine data comprises engine load data and engine speed data (Fig. 1; column 4, lines 29-47; column 7, line 58 to column 8, line 5).

6. Regarding Claim 3, Fischer as modified discloses a memory unit storing driving mode information that at least assists said control unit in the selection of one of said at least two modes of noise attenuation signal generation (Figs. 1, 3, and 5).

7. Regarding Claim 4, Fischer as modified discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine speed data (Figs. 1, 3, and 5).

8. Regarding Claim 5, Fischer as modified discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data (Figs. 1, 3, and 5).

9. Regarding Claim 6, Fischer as modified discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data and said engine speed data (Figs. 1, 3, and 5).

10. Regarding Claim 20, Fisher discloses said first driving mode is a sport-driving mode and said second driving mode is a normal driving mode (column 3, lines 43-63).

11. All elements of Claims 21 and 22 are comprehended by Claim 1. Claims 21and 22 are rejected for the reasons stated above apropos to Claim 1.

Response to Arguments

12. Applicant's arguments with respect to claims 1-6 and 20-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

WO 01/29819 to Fusser et al. discloses a method and device for actively influencing the intake noise of an internal combustion engine (USPN 6688422 is a continuation of application WO 01/29819).

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corey P. Chau whose telephone number is 571-272-7514. The examiner can normally be reached on Monday-Friday, 9:00am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 9, 2007
CPC

VIVIAN CHIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600